· INDEX REPORTING WORKSHEET. 12 13 14 15 16 17 18 19 20 21. 22 23 24 25 CASE NO. TYPE, D D M M Y DISCH - DATE OF DISCH DATE OF BOARD DECISION 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 · 45 47 48 49 50 51 41 42 43 . 44 45 DISCHARGE AUTHORITY REASON FOR REVIEW BOARD DEC'N TEFT JUSTIFY) DISCHARGE AUTHORITY (LEFT JUSTIFY) 56 57 76 77 58 59 60 63 64 65 66 67 73 74 75 61 62 68 69 70 71 72 SUES ADDRESSED



## DEPARTMENT OF THE AIR FORCE WASHINGTON DC

JUL 23 1998

Office of the Assistant Secretary

AFBCMR 97-01741

## MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to be corrected to show that he was not released from active duty on 31 August 1992 and retired for length of service on 1 September 1992, but was continued on extended active duty until 30 September 1992, when he was released from active duty and retired for length of service on 1 October 1992.

Director

Air Force Review Boards Agency

JUL 2 3 1998

## RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-01741

COUNSEL: NONE

HEARING DESIRED: NO



## APPLICANT REQUESTS THAT:

His retirement date be changed from 1 September 1992 to 1 October 1992.

## APPLICANT CONTENDS THAT:

The 1 September 1992 date is unjust because it will deny his ex-wife full medical benefits. His retirement date is one day short of the 20-year requirement for her to receive full coverage. No one realized nor were they counseled about this requirement when he submitted his retirement papers. If they had known, he would have gladly spent an extra month on active duty.

On 25 October 1996, he filed divorce papers. Until this time neither of them ever thought about his USAF retirement date and the possible impact.

Applicant's request is at Exhibit A.

#### STATEMENT OF FACTS:

On 23 January 1970, applicant was appointed as second lieutenant, Reserve of the Air Force. He was voluntarily ordered to extended active duty on that same date. He served on continuous active duty, was integrated into the Regular component on 22 September 1978, and progressively promoted to the grade of lieutenant colonel.

On 22 May 1992, applicant submitted an application for voluntary retirement, to be effective 1 September 1992. On 31 August 1992, he was relieved from active dúty and retired effective 1 September 1992. He was credited with 22 years, 10 month, and 7 days of active service for retirement.

Applicant stated that he filed divorce papers on 25 October 1996.

## AIR FORCE EVALUATION:

The DEERS/RAPIDS Operations Branch, AFPC/DPSFR, reviewed this application and recommended denial, stating the applicant's ex-wife did not complete a full 20-year overlap of marriage and the applicant's creditable service in determining eligibility to retired pay. To adjust applicant's retirement date would not be consistent with the intent of the law.

At the time of his retirement, the overlap of marriage and his creditable service in determining eligibility to retired pay was 19 years, 11 months, and 29 days. The former spouse meets the first two requirements of the Uniformed Services Former Spouses' Protection Act. At the time of divorce, they were married at least 20 years and the applicant had performed 20 years of service. However, she did not meet the third requirement of having completed at least a 20-year requirement of overlap of marriage and the sponsor's creditable service in determining eligibility to retired pay. Because the overlap was less than 20 years but more than 15 years, applicant's former spouse would be entitled to medical for one year from the date of her divorce, if she was not enrolled in an employer-sponsored health plan and had not remarried.

The complete evaluation is at Exhibit C.

The Retirements Operations Section, AFPC/DPPRSO, recommended denial of this application, stating applicant's retirement was a voluntary action that was processed correctly. Although applicant has not provided any documentation to verify the conditions he reports, it is unlikely that this would impact the fact that no errors occurred in the handling of his retirement. Further, to award applicant enough unserved military credit to qualify for the provisions of this law would be unfair to the other military retirees who subsequently (several years following military retirement) divorce and yet also do not quite meet the requirements for spousal benefits. (Exhibit D)

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reiterated his contentions that at no time during his retirement counseling did anyone brief or counsel either he or his wife on the 20/20/20 requirement. To deny his ex-wife these benefits for the sake of one day would be a complete injustice and place an unbearable financial hardship on her.

Applicant's response is at Exhibit F.

## THE BOARD CONCLUDES THAT:

- 1. The applicant has exhausted all remedies provided by existing law or regulations.
- 2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
- Sufficient relevant evidence has been presented to demonstrate the existence of probable injustice. In this respect, because applicant's retirement date of 1 September 1992 was one day short of the required 20-year overlap of marriage and credible service for retired pay, his former spouse was ineligible for full benefits under the 20/20/20 provisions of the Uniformed Services Former Spouses' Protection Act. In our opinion, had the applicant been aware of the requirements under the 20/20/20 provisions, we believe he would have made a different career choice with respect to his retirement date. Therefore, in view of the former spouse's honorable service to the Air Force throughout the applicant's military career, we do not believe she should be penalized because the marriage lacked one day of overlap with the applicant's credible service for retired pay. In view of the above, and in order to preclude any injustice to the applicant's former spouse, we recommend that the records be corrected as indicated below.

### THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he was not released from active duty on 31 August 1992 and retired for length of service on 1 September 1992, but was continued on extended active duty until 30 September 1992, when he was released from active duty and retired for length of service on 1 October 1992.

The following members of the Board considered this application in Executive Session on 28 May 1998, under the provisions of AFI 36-2603:

Mr. Wayne R. Gracie, Panel Chair

Ms. Rita S. Looney, Member

Ms. Ann L. Heidig, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 4 Jun 97, w/atchs. Exhibit B. Applicant's Master Personnel Records. Exhibit C. Letter, AFPC/DPSFR, dated 30 Jun 97.

Letter, AFPC/DPPRSO, dated 15 Sep 97, w/atch. Letter, SAF/MIBR, dated 6 Oct 97. Letter, Applicant, dated 14 Oct 97. Exhibit D. Exhibit E. Exhibit F.

WayeR GRACIE
Panel Chair



# DEPARTMENT OF THE AIR FORCE HEADQUARTERS AIR FORCE PERSONNEL CENTER RANDOLPH AIR FORCE BASE TEXAS



30 June 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPSFR

550 C Street West. Suite 37 Randolph AFB TX 78150-4739

SUBJECT: Application for Correction of Military Records

1. Requested Action: The applicant is requesting correction of his records to provide continued identification card benefits and privileges for his former spouse.

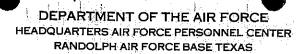
## 2. Facts:

8 months and 11 days of active service. At the time of his retirement, the overlap of his marriage and his creditable service in determining eligibility to retired pay was 19 years, 11 months and 29 days. The former spouse meets the first two requirements of the Uniformed Services Former Spouses' Protection Act. At the time of divorce, they were married at least 20 years and the sponsor had performed 20 years of service. However, she did not meet the third requirement of having completed at least a 20-year requirement of overlap of marriage and the sponsor's creditable service in determining eligibility to retired pay. Because the overlap was less than 20 years but more than 15 years the date of her divorce, if she was not enrolled in an employer-sponsored health plan and had not remarried.

b. Believes his records should be adjusted so his dates would reflect that his former spouse meets the 20-year overlap, thus making her eligible for continued medical care benefits. However, his records are not in error. No authority exists to change his retirement date for the sole purpose of allowing his former spouse eligibility to former spouse (20/20/20) privileges. The law specifies there must be at least a 20-year overlap of the marriage and the sponsor's creditable service in determining eligibility to retired pay.

3. Recommendation. No error or injustice has occurred. Sold addid not complete a full, 20-year overlap of marriage and the sponsor's creditable service in determining eligibility to retired pay. To adjust the dates would not be consistent with the intent of the law.

GEORGE HOBACK, GS-13, DAF Chief, DEERS/RAPIDS Operations Branch



EMORANDUM FOR AFBCMR

1 5 SEP :397



FROM: HQ AFPC/DPPRSO

550 C Street West, Suite 11 Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

Reference

Requested Action. The applicant is requesting his retirement date be changed from 1 Sep 92 to 1 Oct 92. He is requesting this change be administrative only with no additional retirement pay.

Basis for Request. Applicant contends the 1 Sep 92 date is unjust because it denies his ex-wife full medical benefits. The retirement date (1 Sep 92) is one day short of the 20 year requirement in order for her to receive full coverage.

#### Discussion.

a. On 22 May 92 applicant voluntarily applied for retirement and was approved for retirement to be effective 1 Sep 92. AFI 36-3203 provides for extension of an approved retirement by reason of hardship uncommon to a member's contemporaries or for the best interest of the Air Force (Atch 1). However, there is no provision for applicant to request an extension of his approved retirement for the sole purpose of providing medical benefits for

Recommendation. Denial. No error or injustice has occurred. Applicant's retirement was a voluntary action that was processed correctly. Although member has not provided any documentation to verify the conditions he reports, it is unlikely that this would impact the fact that no errors occurred in the handling of his retirement. Further, to award applicant enough unserved military credit to qualify for the provisions of this law would be unfair to the other military retirees who subsequently (several years following military retirement) divorce and yet also do not quite meet the requirements for spousal benefits.

JOHN SMITH, DAFC Retirements Ops Section

Directorate of Personnel Program Management

Attachment AFI 36-3203, para 2-21 the 7DO period is not delayed while the deferment or reclama is in process. If the request is disapproved, the member has another 7 calendar days to apply for a hard-ship retirement (under paragraph 2.18).

2.19.2.1. Approval of an assignment reclama, humanitarian, or EFMP request doesn't, in itself, support withdrawal of a retirement request submitted under the 7DO. Members with a valid hardship may still apply for retirement under paragraph 2.18.2 at any time after the 7DO period has passed if they can substantiate that severe personal hardship would otherwise result.

2.19.2.2. To input PTI 958 in the PDS after the 7DO period has passed, the MPF enters SPEC-PROG-ID code "70" in DIN RFI and mails documented evidence of hardship to HQ AFMPC/DPMARR2 (or to AFDPOB for colonels and colonel selectees).

2.19.3. Enlisted 7-Day Option (PCS Declination Policy). Don't confuse applying for retirement under the 7-day option (in lieu of PCS) with the separate and distinct action of declining to get retainability for reassignment by signing a PCS declination statement. Members who sign a declination statement may not apply for retirement until the appropriate assignment manager cancels the assignment and removes it from the base-level file by flow of PTI 510 to the MPF.

2.19.3.1. CONUS-assigned enlisted members with 19 or more years of total active federal military service (TAFMS) who decline to get retainability for a PCS assignment, receive an involuntary DOS of 6 months from assignment notice or a DOS on the last day of the month they complete:

- 20 years TAFMS.
- An ADSC.
- A CONUS maximum stabilized tour.

2.19.3.2. Eligible members apply for retirement to be effective the 1st day of the month following the established DOS or earlier.

2.19.3.3. The MPF sends retirement applications according to table 3.2. In the PDS transaction PTI 958, the MPF updates SPEC-PROG-ID "72" (7-day option) to identify the application as "in lieu of PCS" and thus not subject to withdrawal.

2.19.3.4. Detailed information on PCS declinations and the impact of an involuntary DOS on retirement is in AFI 36-2110 (formerly AFR 39-11).

2.19.4. Retirement Options Available to Officers (Lieutenant Colonel and Below) Who are Ineligible to Elect the 7-Day Option. Officers, who have an ADSC more than 12 months from the date of assignment notice, may apply for retirement in lieu of PCS. If approved, retirement is on the date the member requests or on a date the SAF directs.

2.19.4.1. Officers with lengthy ADSCs will proceed on their assignments if the Air Force critically needs their services. However, they remain eligible to retire on completing their original ADSC.

2.19.4.2. The MPF completes AF Form 1160, section III,

and mails it to HQ AFMPC/DPMARR2 showing the officer's requested retirement date in section IV, "Remarks."

2.20. Retirement in Conjunction with High Year Tenure (HYT) Date. Members request voluntary retirement to be effective no later than the 1st day of the month following the HYT date. Members apply for voluntary retirement or separate at these HYT dates:

 Staff sergeants (SSgt) and technical sergeants (TSgt) upon reaching 20 years of service.

Master sergeants (MSgt) at 24 years of service.

 Senior master sergeants (SMSgt) at 26 years of service.

• Chief master sergeants (CMSgt) at 30 years service.

2.20.1. Members may submit requests for extension of a HYT retirement date based on extreme hardship not common to contemporaries, or best interest of the Air Force to HQ AFMPC/DPMARR2 for consideration on a case-by-case basis. Approval requires detailed evidence that the member must stay on active duty to resolve the hardship and can eliminate the problem within the extension period. The period is the time needed to solve the problem, but may not exceed 1 year.

2.20.1.1. The mission support and squadron commander may disapprove requests not meeting this criteria.

2.20.2. Wing or comparable level commanders may request HYT extensions on uniquely qualified noncommissioned officers (NCOs) filling critical positions when they are essential to the success of a vital mission and suitable replacements can't be found. Submit fully justified requests (containing unit, wing commander and MAJCOM recommendation) through command channels no earlier than 1 year and no later than 6 months before the individual's HYT. The maximum extension period is 1 year.

2.21. Request for Withdrawal or Change of Month. If retirement on the scheduled date will cause severe hardship for the member or the immediate family, or if it isn't in the best interest of the Air Force, submit a request for withdrawal or change of month. The request package must contain pertinent written documents. Table 3.2, rules 6 and 7, show how to make these requests. Withdrawal or extension usually won't be approved if the member is retiring under the 7DO.

2.21.1. Requests for Retirement Withdrawal or Extension of Retirement Date Based on Hardship. The request package must tell what the hardship is and show, with written evidence, how retention on active duty will ease or solve the problem. Also, members must show that the hardship came up, or got worse, after they applied for retirement and that they could not reasonably foresee the hardship at the time they made retirement plans.

2.21.1.1. The MPF codes SPEC-PROG-ID as "70" (hardship) in the PDS transaction PTI 95A or 95B. Show in the remarks section of the transaction the date the member signed AF Form 1160.

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2.21.2. Requests for Retirement Withdrawal or Extension Based on Best Interest of the Air Force. The member initiates these requests.

2.21.2.1. The commander or other senior official provides evidence that clearly shows it is in the best interest of the Air Force for the member to stay on active duty. A commander who recommends disapproval gives the reasons.

2.21.2.2. In the PDS transaction PTI 95A or 95B, the MPF codes the SPEC-PROG-ID "73" (best interest of the Air Force). In the remarks section show the date on which the member signed the AF Form 1160.

2.21.3. Request for Retirement Withdrawal or Extension Based on Promotion. These requests may be approved if the member was selected for promotion after applying for retirement. Enlisted personnel who applied for retirement under the 7DO may not apply for withdrawal or extension based on promotion.

2.21.3.1. For members selected for promotion to MSgt, SMSgt, or CMSgt, the MPF shows on the AF Form 1160 that the member has signed a statement agreeing to fulfill the promotion commitment.

2.21.3.2. The member sends the withdrawal request within 10 workdays after confirming the promotion.

2.21.3.3. Because members selected for SSgt or TSgt have

no ADSC, they may retire the 1st day of the month following the effective date of promotion or extend their retirement date for up to 6 months.

2.21.3.4. In the PTI 95A or 95B, the MPF enters SPEC-PROG-ID code "71" (withdrawal or extension of retirement based on promotion). In the remarks block, show the date on which the member signed the request for withdrawal or extension.

2.21.4. Approval. The appropriate HQ usually approves requests for an earlier retirement date unless the date is otherwise restricted.

2.21.5. Request for Retirement Withdrawal or Extension for Medical Reasons. A member may not request withdrawal or extension to stay on active duty solely to resolve a medical problem or receive medical treatment. If the member's medical problems are severe enough to warrant a change of retirement date, the local medical facility uses the medical hold procedures detailed in chapter 5.

2.22. Request for Extension Beyond a Date of Separation (DOS). The MPF may not accept or process a request to extend a retirement past the DOS of an enlisted member, or the mandatory DOS of an officer except as shown in paragraph 4.2.2.

R	<b>A</b>	ssion or Processing of Retirement Application.
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E	If member	then the same and
1	is under investigation	MPF suspends processing of application until investigation is complete.  Then if one or more of the restrictions in table 2.2 apply, process accordingly. When no further action is taken after investigation is completed, return to NORMAL application processing (see note 1).
2	is serving overseas or on a CONUS maximum stabilized tour and requests retirement date beyond DEROS or tour completion date (see note 2)	member must delay submission of retirement application until arrival at new duty station, when desired date is later than the first day of month after DEROS or tour completion date. Member becomes subject to restrictions existing at that time.
3	applies for retirement on or after ASD and is not eligible to apply under paragraph 2.19, or applies under paragraph 2.19 for an unauthorized date	restriction will not be waived. MPF won't accept application unless ASD is canceled. Member must proceed PCS and may not submit application until arrival at new duty station. Member is subject to any other restrictions existing at that time (see note 3).

#### NOTES:

- 1. If member applied for retirement and it later develops that a restriction applies, MPF immediately notifies HQ AFMPC/DPMARR2 (or AFDPOB for colonels and colonel selectees) and the MAJCOM so that retirement processing is suspended.
- 2. Pertains to members who apply for retirement before ASD. If the application was submitted on or after ASD, member may apply, if eligible, under 7-day option rules (see paragraph 2.19 and table 2.3).
- 3. Paragraphs 2.18.2 and 2.19.2 show how to apply for retirement under hardship conditions.